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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

PHILLIP M. ADAMS & ASSOCIATES,
L.L.C., a Utah Limited Liability Company,

Plaintiff,

vs.

DELL INC., FUJITSU LIMITED,
FUJITSU COMPUTER SYSTEMS
CORP., MPC COMPUTERS, LLC, and
SONY ELECTRONICS INC.,

Defendants.

**ADAMS' MOTION FOR SANCTIONS
AGAINST SONY INCLUDING
TERMINATING SANCTIONS BASED
UPON SONY'S SPOILIATION OF
EVIDENCE OF SONY'S PIRACY**

Civil No. 1:05-CV-64

The Honorable Ted Stewart
Magistrate Judge David Nuffer

Phillip M. Adams & Associates ("Adams") brings this motion against defendant Sony Electronics, Inc. ("Sony") for terminating sanctions based upon Sony's spoliation of evidence that would have demonstrated Sony's piracy of Adams' patented technology.

Sony has clearly been put on notice that this Court will not tolerate such spoliation. Sony sought to intervene in the Gateway litigation [Adams v. Gateway, Dkt No. 568], and Sony, in fact, obtained copies of all of the Court's Orders (sealed and unsealed) regarding Gateway's spoliation of evidence and other misconduct including this Court's "warning" [Dkt Nos. 581 and 582]. Thus, Sony was "warned" by this Court that the spoliation of evidence could result in terminating sanctions. E.g., Dkt No. 484, Memorandum Decision and Order at 17-18 (including the "warn[ing] that if there is further evidence that is missing or tardily disclosed, or if it engages in further conduct that impedes the disclosure or discovery of relevant evidence further severe sanctions, including entry of judgment, shall be imposed.")

Despite this clarion warning, Sony has engaged in conduct that is just as egregious as Gateway's misconduct. Sony has lost or destroyed the most critical evidence in this case. This destroyed and lost evidence would have demonstrated Sony's piracy of Adams' patented technology. Because of Sony's spoliation of evidence, Adams respectfully requests that this Court enter judgment against Sony on liability issues, and that this Court hear Adams' claims for the amount of damages.

Therefore, for the reasons outlined in the supporting memorandum, Adams respectfully requests that the Court grant this motion.

STATEMENT OF EFFORTS MADE TO REACH AGREEMENT

Pursuant to DUCiv.R 37-1, counsel for Adams has made reasonable efforts to reach an agreement with opposing attorneys to produce the spoliated documents and evidence. Those efforts are outlined in detail in the factual statement of the Memorandum filed concurrently herewith which include a meeting on May 1, 2007,

where Dr. Adams, his counsel, and Sony's in-house and litigation counsel met in New York City.

DATED: May 29, 2007.

HOWARD, PHILLIPS & ANDERSEN

s/Gregory D. Phillips

By: Gregory D. Phillips

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **ADAMS' MOTION FOR SANCTIONS AGAINST SONY** was served on the following via email on May 29, 2007.

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